

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 02-0324P
Gross and Adjusted Gross Income Tax
For the Year ended December 31, 1999**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

II. Tax Administration – Interest

Authority: IC 6-8.1-10.1

Taxpayer protests the interest assessed.

STATEMENT OF FACTS

Taxpayer remitted \$121,172.95 after the due date of the return and was assessed penalty and interest.

Taxpayer filed a penalty and interest protest stating that it met three conditions; i.e.,

- 1). An extension of time to file has been granted;
- 2). At least ninety percent (90%) of the tax reasonably expected to be due was paid by the original due date; and
- 3). The remaining tax was paid by the extended due date.

Taxpayer states it believed it had paid one hundred percent of the tax liability and was unaware that the economic presence had increased so significantly in 1999. Due to the significant increase in its apportionment percentage, it underpaid its tax for the year. The tax was paid by the extended due date.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that it paid one hundred percent of the tax reasonably expected to be due by the original due date and there was no willful neglect on its part.

45 IAC 15-11-2(b) states, “Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

Taxpayer failed to remit in excess of fifty percent (50%) of its tax by the original due date of the return. There is no provision in the Indiana Code that allows a taxpayer to pay the tax after the original due date without a penalty and the Taxpayer has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer’s protest is denied.

II. Tax Administration – Interest

DISCUSSION

Taxpayer protests the additional interest assessed.

Payment is first applied to penalties, interest, and then tax. Interest continues to accrue until payment in full has been received. The Department has no statutory authority to waive interest.

FINDING

Taxpayer’s protest is denied.